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Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Violations of the right to counsel of Viet Nam human rights defender Le Quoc Quan

The International Commission of Jurists (ICJ) welcomes the report of the Special Rapporteur on human rights defenders, particularly the identification of elements of a safe enabling environment for human rights defenders.

"The existence of laws and provisions at all levels… that protect, support, and empower defenders, and are in compliance with international human rights law and standards" is indeed important. The ICJ has followed the situation of HRDs in Viet Nam, particularly lawyers who have been defending other human rights defenders.

One such lawyer is Le Quoc Quan, who was charged with tax evasion under the Viet Nam Penal Code. His company was ordered to pay allegedly unpaid tax of 645 million VND (approximately USD30,000) and a fine of 1.3 billion VND (approximately USD60,000). The ICJ believes that these charges were opportunistically selected for use against Le Quoc Quan, whose family collectively owns a business, and were in fact motivated by his work as a human rights defender representing victims of discrimination and land confiscation, and for critical views he expressed regarding the government's human rights policies and violations.

Le Quoc Quan's right to counsel has been violated in several ways from the time of his arrest, up to the time he lodged an appeal to his conviction. The violations resulted from an unduly onerous legal requirement for lawyers to apply for a "defence counsel's certificate" or "advocacy certificate" prior to being able to communicate with and defend their clients.

Article 132 of the Constitution of Viet Nam guarantees "the right of the defendant to be defended" and that "the defendant can either conduct his own defence or ask someone else to do it." Article 11 of Viet Nam's Criminal Procedure Code also provides that detainees, accused, and defendants shall have "the right to defend themselves or ask other persons to defend them" and that courts have the duty to ensure that these persons are able to exercise their right to defence.

In each case, however, before representing a client the lawyer must first apply for a "defence counsel's certificate" or "advocacy certificate". Under article 50(3) of the Criminal Procedure Code, a lawyer must file the application with the appropriate investigating body, procuracy, or court, within three days from his receipt of the request from his client to act as his counsel. The requirement is reiterated under the Law on Lawyers, which provides that the certificate shall be "valid during the proceedings" and is a prerequisite for "contacting organisations and individuals to exercise the rights, fulfill the obligations, and do the activities relevant to the advocacy in a criminal lawsuit."[1]

Le Quoc Quan was initially held incommunicado, with no contact with family, lawyers, or friends, for two months. He was arrested on 27 December 2012, but was only able to meet one of his two lawyers for the first time on the last week of February 2013. The authorities claimed they did not immediately grant permission to Le Quoc Quan's lawyers to see him and be present during his interrogation because they had not received any application from them to appear on his behalf. Le Quoc Quan's lawyers however informed the ICJ that they did apply for an advocacy certificate on 10 January 2013, but had received no response from the court.

Le Quoc Quan was therefore subjected to interrogation by the authorities without his lawyers present, indeed without having had access to counsel at all, on three separate occasions: 27 December 2012 (the day of his arrest), 2 January 2013, and 15 January 2013.

Le Quoc Quan was convicted on 2 October 2013. The Criminal Procedure Code allows an appeal to his conviction if filed within 15 days after the date of pronouncement of judgment. Le Quoc Quan was not allowed to communicate with

[1] Article 27(3) Law Amending and Supplementing a Number of Articles on the Law on Lawyers, The Law No. 20/2012/QH13, 20 November 2012 (hereinafter, the Law amending the Law on Lawyers).

his lawyers immediately after his conviction and had to file the appeal on his own. Only "defendants, victims, and their lawful representatives" have the right to appeal decisions of courts of first instance,[2] excluding the lawyers of defendants. It is only after the appeal has been filed and accepted by the appellate court that the convicted person may identify the lawyer of his choice. The chosen lawyer must then file another application for a certificate and wait for the court's approval. Only after this process are defence lawyers recognized and allowed to participate.[3]

Le Quoc Quan, in drafting his appeal, was further forced to rely exclusively on factual points since all legal documents and files pertaining to his case were withheld from him.

The requirement to apply for and obtain from government authorities a certificate in each individual case before a lawyer can act on behalf of a client, as applies in Vietnam, violates the right of an accused person or person deprived of liberty to prompt access to counsel, for instance under articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Viet Nam acceded in 1982. A delay of two months, as in the case of Le Quoc Quan, grossly violates any reasonable measure of "promptness", which is typically understood as a matter of hours or at most a few days.[4]

The requirement to apply for and obtain a "defence counsel's certificate" or "advocacy certificate" also constitutes undue restrictions on the exercise of the legal profession. Governments must ensure that lawyers are able to perform all of their professional functions without hindrance or improper interference.[5] No court shall refuse to recognize the right of a lawyer to appear before it on behalf of his client, unless the lawyer has been disqualified in accordance with domestic law and in conformity with the UN Basic Principles.[6]

It is especially important for the counsel of the accused to be present during interrogations. The UN Special Rapporteur on the Independence of Judges and Lawyers has affirmed that it is necessary for a lawyer to be present during police interrogations "as an important safeguard to protect the rights of the accused."[7] The UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, has said that the presence of counsel not only deters the police from resorting to ill-treatment or other abuses, "but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment."[8]

The ICJ calls on the Special Rapporteur to reiterate her request to the Government of Viet Nam to extend an invitation to her mandate to undertake a mission to the country.

The ICJ calls on Viet Nam to amend its laws expressly to ensure that anyone deprived of liberty, including human rights defenders, are given access to counsel from the moment of deprivation of liberty or at latest within 24 hours of detention. Viet Nam should also consider including in its laws penalties for law enforcement authorities who do not honour such provisions.

Viet Nam should dispense entirely with the practice of requiring lawyers to obtain from the authorities "defence counsel certificates" or "advocacy certificates" for each client and matter (indeed each step in a particular matter) before they

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[2] Article 231, Viet Nam Criminal Procedure Code.

[3] Article 245(2), Viet Nam Criminal Procedure Code.

[4] E.g. twenty-four hours (*Report of the Special Rapporteur on of the Commission on Human Rights on the question of torture and other cruel, inhuman, or degrading treatment or punishment*, UN Doc. A/57/173 (2002), para. 16); forty-eight hours (Principle 7 of the UN Basic Principles on the Role of Lawyers, welcomed by General Assembly Resolution 45/166 (1998); not more than "a matter of days" (Principle 18(3), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, annexed to General Assembly Resolution 43/173 (1988)).

[5] Principle 16 of the UN Basic Principles on the Role of Lawyers.

[6] Principle 19 of the UN Basic Principles on the Role of Lawyers.

[7] *Report of the UN Special Rapporteur on the independence of judges and lawyers on the question of all persons subjected to any form of detention or imprisonment*, UN Doc. E/CN.4/1998/39/Add.4 (1998), par.47.

[8] *Report of the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment to the Maldives*, UN Doc. CAT/OP/MDV/1 (2009), par. 62.

may communicate with or represent detained or accused persons. Such a requirement unduly impedes the right to counsel of detained or accused persons, including human rights defenders. If such procedures are not entirely eliminated, they must be significantly amended in law and operation such that they cannot in any way delay access of accused and other detained persons to a lawyer of choice, or unduly interfere with a lawyer's effective discharge of his or her professional functions.